

# Blue Ribbon Panel on Ergonomics

November 1-2  
Seattle Marriott Seatac

Members Present: Claude Golden, Larry Bindner, William Andersen, James Merchant, Gwen Malone, David Wegman

Staff Present: Gary Moore, Michael Silverstein, Michael Wood, Paul Snow, Rick Goggins, Ken Mettler, Barbara Silverstein

Guests: Amber Balch, Jan Gee, Doug Henken, Amy Brackenberry, Tonia Neal, Sharon Morris, Gary Smith, Randy Loomans, Dan Fazio

Recorder: Jenifer Jellison

## *November 1*

Meeting called to order by Co-chair Claude Golden. Panel members, staff, and guests introduced themselves. The following members were unable to attend: Jim McCauley, Lee Anne Jillings, Pat Tyson, and Susan Schurman; however, Sue will be joining her subcommittee via speakerphone.

Claude announced that Stewart Burkhammer will no longer be able to participate on the panel. He has been assigned to the trade center site in New York City.

### ❖ Agenda Review

Claude reviewed the agenda and noted that this meeting will primarily be a work session for subcommittees. Public comment will be accepted during subcommittee breakouts and at the end of tomorrow's session. The full panel will reconvene at 4:30.

### ❖ Subcommittee Reports

The Demonstration Project Subcommittee reported that they designed a survey which was sent out to project participants. The deadline for the survey was Friday, October 26. They hope the responses will provide data they can use to come to some conclusions.

The Enforcement Policies and Requirements Subcommittee report was given by Bill Andersen. Bill said he felt there were a lot of issues they still needed to work out but that he felt they were in pretty good shape.

The only member present for the Educational Materials Subcommittee was Larry Bindner. Larry noted that Sue will be available by phone the 2<sup>nd</sup> of November.

## ❖ Review of the October 10 Public Forum

Claude gave an overview of the October 10 Public Forum held at the Seattle Center. The Public Forum allowed ample opportunity for the public to present information. The public forum attracted a number of people and allowed for very broad discussions. All panel members received videotapes of the forum.

## ❖ L&I Status Report

Michael Silverstein, Assistant Director for WISHA Services Division, gave an update on L&I's ergonomics activities. Since the July meeting, Michael reported that L&I has been busy working with a variety of companies and labor organizations and moving forward with the implementation of the rule. The department is encouraged by these activities.

### --Demonstration Projects

Two-page summaries of the 27 demonstration projects were sent to panel members along with three completed demonstration project reports. The department expects 80% of the remaining projects to be completed with products by the end of the year.

Surveys were sent to 99 participants and 28 have responded from 12 of the 27 projects. From a quick review, they seemed quite reassuring.

### -- Outreach

Each region has specific outreach plans to contact every employer in the first wave of implementation– offering a variety of services, consultations, workshops, and making basic educational materials available. Through the last quarter, we contacted 148 of 650 firms. Eleven have participated in demonstration projects.

The department has completed 56 consultation visits, free of citations and penalties, with 22 in the top 12 SIC. Of those 56 consultations, one caution zone job was identified, consistent with the analysis done during the rulemaking by the department, and seven hazard zone jobs were identified. As expected, only in one of the 56 consults did the issue of economic feasibility come up. The department and the employer reached an agreement that the employer is in compliance.

Claude inquired how these agreements on feasibility will be captured. Michael said that in every case some record will be kept. The department is also putting together a searchable database and is tracking all activities they are engaged in, as well as developing a website where information on solutions to problems will be posted. Claude encouraged these ideas.

Michael indicated that thus far there have been no requests for variances.

David Wegman asked if compliance officers see consultation reports before visiting a previously consulted employer. Michael indicated that inspectors do not see consultation reports before they do inspections. However, L&I provides employers with information during consultation visits about whether or not they are in compliance with the rule and will continue to do so.

#### -- Education

Through September, the department presented 356 ergonomics workshops and other overview presentations of the rule. There have been 6500 participants in workshops. Workshops are promoted through quarterly flyers sent out to over 8600 persons or groups. The schedule for workshops is also available online, as well as through local promotions in the regions. From January to June, participants were surveyed about knowledge gained through attending the workshop. Ninety-eight percent of participants felt they had some or a good ability to identify caution zone jobs, hazard zone jobs, and introduce solutions into the workplace.

From July through September, participants were asked pre and post questions targeted at specific items. Example: Are caution zone jobs required to be fixed? 152 of 188 responded correctly.

The department is currently in the process of modifying materials to be more industry specific. Two industry specific workshops are completed. The Timber Operators Council will be scheduling sawmill workshops in Oregon and California. The manual on ergonomics in sawmills is close to completion and the construction workshop has been presented in pilot form and is being revised based on feedback.

#### -- Enforcement Policies

The WISHA Regional Directive (WRD) has been revised and is being sent out for comments. In addition to revising the WRD, the department is in the process of setting up trial inspections.

#### -- Lawsuit

Michael informed the panel the department is facing a court challenge regarding the validity of the ergonomic rule. WE CARE's (Washington Employers Concerned About Regulating Ergonomics) argument is that the rule is not based on adequate scientific evidence. The rulemaking record is very strong and the agency welcomes a review by an independent judicial panel.

❖ Gary Moore, Director of the Department of Labor and Industries.

Gary said that he has been pleased with the progress that has been made. L&I has a steering committee which meets every other week to ensure that the agency is on track with its ergonomics activities. He said that he has been pleased with the progress that has been made and feels that they are making considerable progress with stakeholders. The department has a lot of people working in a good-faith fashion and we are very thankful for the level of participation.

Claude Golden asked what the department's intentions were when the Blue Ribbon Panel's report is received. Gary said the plan is to go through the recommendations and develop responses needed to address them.

Michael Silverstein said that in addition to the demonstration projects, there is a requirement that an agency must evaluate the effectiveness of any significant rules that it promulgates. The department can provide the panel with how they plan to do that. He also said that the agency has been developing policies and procedure to be used as a directive to the agency's field staff. The WRD cannot establish new requirements – only provide instruction. Some members of the public argue that the information in the WRD should be in the rule. Bill Andersen said that the difference between a rule and a policy is a very fine line – a very complicated argument.

The panel thanks department staff for their support of the panel.

### *Subcommittee Breakout*

#### ❖ Enforcement Policies and Requirements Subcommittee

Larry Bindner joined the Enforcement Policies and Requirements Subcommittee for the day's sessions.

Barbara Silverstein, L&I SHARP Program and Sharon Morris with the University of Washington, updated the subcommittee on the grant study funded by the Centers for Disease Control. The study is looking at the effectiveness of the implementation of the ergonomics rule. The grant work includes surveys taken at three intervals and site visits. The surveys look at employers in Washington state with respect to injuries, risk factors present in jobs at their company, preventive steps taken and results of those steps, and whether or not employers knew their state has an ergonomics rule and if yes, the effects of the rule.

So far, surveys have been done in 1998, 2001, and another will be done in 2003. The survey results are sent to a third party who processes them. They are currently in the process of evaluating the data they have received. The second part of the survey is the UW contacting employers to see who would be willing to have site visits conducted by the UW. The last round of surveys had 5600 respondents of 9000 surveys sent out– 62% of employers receiving the survey. There are 192,000 employers in Washington State. The third portion of the study is evaluating the transfer of information between the different groups concentrating on trade journals, industry journals, and websites.

The study did not include employers with less than three employees. From 1998-2001, there has been a slight increase in the number of employers in Group 1 of the phase in of implementation who are taking steps to prevent WMSDs.

Sharon said they aimed for 60 site visits around the state – 30 in Group 1 and 30 in Group 2 – there were 61 total interviews. In each interview they tried to have five management and five employees participate. Each site visit took about 20 minutes. They found 47% of managers had heard about the rule (51 site visits) and 77% had taken steps to address hazards. Of workers, only 17% had heard of the rule and 71% had experienced problems (very preliminary). The UW will revisit sites in two years.

Thanks was extended to Barbara and Sharon.

William Andersen stated that because enforcement of the ergonomics rule has not yet begun, it is very difficult to determine whether the policies and procedures are fair. He stated that it would be most helpful to get specific information from the public about what portions of the enforcement process they feel are unfair, identifying places where the process could be improved.

Amber Balch, AWB, told the subcommittee that there are some fundamental differences of opinion. She said the lawsuit was filed by a coalition of employers (WE CARE) and of all the questions the panel should look at “understandability and fairness of the policies and procedures” as the most crucial.

William Andersen said that while reading through some of the testimony given by participants of the October 10<sup>th</sup> public forum he noticed there was concern about the inconsistency of the inspection process. He asked the public for any data regarding the inconsistency of inspectors based upon previous rules and where that data came from.

Amber mentioned that employers have had experiences of ergonomics violations being issued under the Accident Prevention Program standard. Dr. Merchant asked for specific instances.

Jan Gee, Washington Food Industry, said that the grocery industry constitutes one-half of the first wave of employers covered by the rule and they still have many questions on how the rule is to be implemented. In her opinion, she felt it was telling that grocery stores are more advanced than any other industry in this state in attempting to come into compliance with this rule. The industry has spent a lot of time with labor representatives and department representatives in determining what applies and what doesn't. She feels that the department is ill prepared to interface with the industry and vice-versa to make this rule work in the state's grocery stores. She said the industry has never denied that they had soft tissue injuries and felt they had enjoyed a good relationship with the department until just recently.

James Merchant asked if this lack of clarity came from a need for educational sessions or simply not wanting the rule. The grocery industry is in favor of ergonomics but just confused and needs to know how to understand it? How do we get from this point to acceptance?

Jan Gee clarified by saying that she didn't say the grocery industry wasn't opposed and they do have huge concerns over parts of the rule. They have concerns that the WRD is not typically distributed to the employer and also have questions about what is policy and what is not. Jan also said that the rule could conceivably create issues with collective bargaining agreements.

Dr. Merchant suggested that the WRD be placed in the education material.

William Andersen questioned Jan on whether she thought the WRD should go through the rulemaking process. Jan responded that there is information in the WRD that the employers need to know and anything that is policy related, collective bargaining, third party needs to be in the rule.

Amber Balch insisted that the department be prevented from changing the information in the WRD at the drop of a hat.

William Andersen asked Amber if it would be better if there were no WRD. Jan Gee said it would be best if the rule were more explicit and had the same substance as the WRD.

Michael Silverstein explained that the WRD is primarily intended to provide direction to field staff so that they perform consistently. The WRD has many places where it tells inspectors what NOT to do.

Jan Gee said the Washington Food Industry (WFI) was waiting for the proper language from the department before participating in the trial inspections to ensure that they will not be cited for other types of violations. The WFI plans to videotape each of the inspections to help train the grocery industry. Another concern of WFI is the extraordinary cost to their industry -- \$9,000 per employee.

Michael Silverstein said that the department and the WFI have done a lot of positive work together. The estimate Jan just provided includes items that are not required by the rule such as redoing the lighting, ergonomic chairs for the break room, beveled floor mats, etc. The trial inspections should resolve some of these things.

James Merchant asked how many trial inspections in each of the top 12 SIC codes will be done. Michael Wood said they haven't worked all those details out but he felt confident that the department could do trial inspections with any employer who would like to participate; the agency is not limiting itself to the top 12 SICs. The trial inspections are nonenforcement visits.

Jan said the trial inspections are very important. They are asking that they write up the results indicating what is a best practice, safe harbor and what is not.

William Andersen again asked Amber if the WRD should be in rule form. He commented that the rule development process is long and cumbersome and that the rule to be as specific as possible ????????????

Amber Balch felt the department was “biting off more than it could chew” in terms of musculoskeletal disorders. She said that having draft after draft before finalization is a quazi rulemaking. The timeframe of the WRD doesn’t make any sense because by the time its done, employers have only six months to understand it and then apply it.

James Merchant asked if it was just a matter of time, what would have been a better time frame. Amber said before the regulation was adopted.

Jan said that the WFI, with the union, developed a draft education tool completed last May and gave it to the department in June hoping to have it finalized by July. They are currently in their third draft of the document. WFI felt that with 80,000 employers and a complex rule, they wanted a year to complete this. By the time all the revisions are completed, they will six months.

William Andersen commented that on the one hand he was hearing that business wanted more specificity but, on the other, they don’t want Labor and Industries to hand out an informational document. They’d rather it be locked up in rule form where it’s more cumbersome to change. It would seem more helpful for the subcommittee if they had specific instances of things that are not understood and what things are felt to be unfair. Rather than accusations, specific items that make the rule not understandable, the WRD unfair. The more specific the better.

Amber said that employers just want the department to tell them what they have to do to be in compliance. Jim Merchant commented that if the department was too specific, it wouldn’t allow employers to be innovative; it could be restricting.

James Merchant asked the audience if they had any comments on what L&I could do to make the rule more understandable.

**BREAK**

Bill asked for clarification about the timing of the enforcement process. The first set of requirements is to have completed job analyses and awareness education for those employees and their supervisors with caution zone jobs. No employer has to have fixed a hazard zone job until the following year.

With regard to basic awareness education, Michael Silverstein added that the department has provided a safe harbor in the form of an hour-long basic education module which has been available for a year.

What is the purpose of the education awareness program? Michael said it's for employees and their supervisors working on jobs that might place them at risk. There are four elements: Types of controls, what is covered by the rule, information about kinds of injuries covered by the rule, and the rule itself.

Gary Moore said that L&I put itself in the first wave of employers needing to comply with the rule. Of the 2000+ employees, there were 14 jobs that might be hazardous. The process went very quickly.

Several members of the public reiterated they didn't have enough time before enforcement of the rule begins. William Andersen said he understood that there would be no citations handed out for failure to fix hazardous jobs as it wasn't required for the first wave of employers until 2003. That being the case, it seemed to him that there was substantial time.

Doug Henken expressed frustration about the amount of time it has taken to get a buy off from the department on their industry specific training. He questioned whether the rule was really about reducing injuries. Industry-specific education will help to reduce injuries but it isn't getting done.

Amber said all this gets back to understandability of the rule. There are five pages in the WRD about whether or not the rule applies to an employer. If this information is important enough for an inspector to know, it should be in the rule itself. She said there was confusion in the employer community about whether or not the rule applies to them.

The discussion of the implications of 9/11 on the financial stability of some businesses and the affect it may have on their ability to implement controls, if needed, ensued.

#### ❖ Demonstration Project Subcommittee

Rick Goggins distributed copies of the returned surveys. Limited surveys have thus far been returned. There are currently twelve demonstration projects without responses to the survey. The subcommittee would like follow-up reminder calls to be made to those who have not yet responded, with a deadline of November 30, 2001.

Task assignments were made to divide up the work among subcommittee members along with a time plan. They plan to have a draft report ready for the final meeting in February 2002.

David Wegman commented that the demonstration projects serve different purposes. He suggested the 4 categories to evaluate them by:

- hazard identification/best practices
- employer's ability to identify caution zone jobs (risk factor analysis)
- educational material
- trial inspections



Evaluate how the demonstration projects met these areas.

David Wegman commented that there were some misunderstandings as noted from review of the public forum videotape and review of some of the surveys. Results aren't necessarily generalizable to all. The objectives of demonstration projects were specific to that setting. There is a need to recognize what they were intended to do.

The group began brainstorming the basics of a matrix to work from. Rick Goggins will pull together information tonight so that the group can work with some information tomorrow.

Subcommittee members requested an explanation of overall program summaries.

Tonya Neil, with BIAW, introduced herself and handed out copies of 5 surveys, not been previously turned, in from their members.

Rick Goggins read the summary for the masonry demonstration project. He indicated that they identified the representative hazards of the industry. What participants thought would be hazardous ended up not being so, according to the group. The group further discussed the terms safe harbor, best practices, and acceptable practices as defined by the WRD. Safe harbor has 2 uses: within compliance, and falling short of full compliance. Rick Goggins commented that a best/acceptable practice is a WISHA term (internal) and safe harbor is more understood by employers as to what gets them into compliance.

David Wegman suggested that a self-evaluation of success section be added to the 2-page summaries -- WISHA's self-evaluation, not the participants'. He also suggested appropriate revisions be made based upon inputs received from the surveys.

It was summarized that generally, L&I proposed goals for the projects which were either accepted or rejected by the group and may have been refined along the way.

The wallboard demonstration project summary was read out loud. The report should be done by the end of December.

David Wegman noted that there was concern about not having safe harbors which brings back the point of the need for clarity. The major criticisms have to do with issues of feasibility and fear of being caught. The rule's intent is to deal with the worst problems. It has not yet been effectively communicated that L&I will work with employers on issues of safe harbors.

Consultation is an effective way to deal with it and it seems that employers don't take advantage of it. Rick Goggins indicated that consultations are being done and are available. They are not wall-to-wall in scope, but address a few jobs chosen by the employer.

The group discussed and worked through the beginnings of an information matrix. This is the information that the subcommittee members want in order to help them with their analysis. Rick was assigned to work on this further.

David Wegman asked what was L&I seeking to demonstrate in those 4 categories? Rick Goggins said that one of the goals was to provide examples.

David Wegman added, not necessarily precise examples, but general examples. Rick was asked to provide an explanation under each of the 4 headings.

David Wegman reiterated the need to push harder to get more survey responses back, especially from those groups that have no responses at all.

A suggestion was made for personal telephone calls and perhaps getting verbal responses if that would help. Let the participants' know that their feedback makes a difference.

Public Comment Opportunity:

Tonia Neil asked if the Blue Ribbon Panel or L&I was going to summarize the results of the survey. The Blue Ribbon Panel will. Tonya Neil also stated that the residential construction participants weren't aware they were a demonstration project until their last meeting. She also mentioned that the projects aren't done yet and things shouldn't push forward if they are not done yet.

With input from others in the room, David Wegman attempted to organize the different demonstration projects by sorting them into different categories (e.g., variable work process industries, short cycle, straight forward with a narrow specific focus, etc.).

David Wegman asked that L&I explain why the demonstration projects were chosen and what were they attempting to achieve. Barbara Silverstein responded that the top 12 were specifically targeted. Some were recruited and others volunteered. Some backed out, others couldn't devote resources or were funneled toward the consultation process.

There was some discussion about the inspection process. There was a question as to whether L&I will be able to effectively inspect those tough places as well as those workplaces that are more routine. L&I is attempting to schedule 100 trial inspections.

## Panel Reconvenes

Bill Andersen reports that Barbara Silverstein and Sharon Morris gave a report about an ongoing study and they hoped to get additional information which will be helpful. Most of their breakout was spent hearing from representatives from the business community in reference to fairness of the policy and procedures and understandability of the rule.

There was some disagreement as to how much detail there should be in the regulation versus policy; letting a company figure it out or telling them specifically what to do.

Merchant said that hearing from both the employer community and the department helped them understand the issues more clearly. The WRD is an important but as yet unfinished document, and they want to have a good look at it once it is revised and some trial inspections have been completed.

Bill asked business representatives to give them a list of places in the WRD and rule that seemed to raise questions about fairness and understandability.

David Wegman said that the Demonstration Project Subcommittee had a useful discussion addressing how to come up with an evaluation of success. They asked the department to draft a statement of their objectives on why the department did the demonstration projects the way they did. This document will aid the subcommittee in understanding whether the research the demonstration project did met the objectives in terms of what the department meant for it.

The subcommittee struggled with the issue of how to summarize success individually and collectively. They asked the department to provide a self-evaluation and aggressively pursue obtaining the remaining surveys.

Larry Bindner informed the panel that the next meeting was scheduled for February 11-12. It was decided that due to the amount of work to be completed in the final meeting the first day would be a full day and the second day a half-day.

## NOVEMBER 2

### ❖ General Discussion

The panel met for 20 minutes then broke out into subcommittees.

The panel asked Michael Silverstein to answer some questions that came up during the panel meeting the previous evening. They asked to see the version of the WRD they would be using no later than mid-January. They'd also like a report by January 15 of the trial inspections. The panel strongly encourages public comment to be submitted as soon as possible; however, comments will be accepted till the end of January.

David Wegman shared some thoughts about the outline of the final report. He suggested the report be organized into three sections: background, the panel's findings on each of the four questions, and observations and recommendations.

In the background section, they'd address their view of what they've heard in regard to the department's efforts. They requested an organized categorized list of the materials they have received. It should also include a list of all the people they've heard from, list of each of the questions being asked and then our findings in regard to the material they

have received and discussions heard. Then conclusions. Finally, a general statement about the rule in regard to what we've learned and recommendations lined to the four questions.

Amber Balch inquired what the panel's plan was to share drafts with the public so they can comment on them. Claude Golden said that at this time there are no plans to share a draft version with the public.

### *Subcommittee Breakouts*

#### ❖ Enforcement Policies and Procedures Subcommittee

Bill Andersen said that while there are two hours given for this particular breakout the plan is to spend one-half hour hearing from the department on specific questions the panel has, then hear from the public, then go into executive session.

WRD and trial inspections. The department is in the process of finalizing the second draft of the WRD and should have that available around November 8. L&I is also getting ready for trial inspections which will test the policies and procedures and whether or not staff are sufficiently trained. The report on the trial inspections should be completed before mid January.

L&I is hoping to get as many range of SIC codes and variety of exposures, large and small employers to participate in the trial inspections.

Bill asked if the WRD will be revised to what the department learns in the trial inspections. Yes

Bill asked what will happen during the trial inspections when a violation of a current regulation is seen. Michael Wood said that the inspector will bring it to the employer's attention but that is all. The employer will receive a report of the inspection showing what they found, how to handle it, and what would have happened if the rule had been in effect. The department is asking for volunteers and contacting employers they've had contact with in the past.

Jim Merchant brought up the issue of consistency among inspectors in enforcing the rule. Given the complexity of the rule, how will inspectors implement it and what recourse will employers have in a perceived violation.

Michael Wood said that the department takes the consistency issue very seriously. Ergonomics is a potentially complex science but that doesn't necessarily make for a complicated rule. Part of the reason the WRD is so detailed and contains so much content is to help ensure consistency among inspectors. There will be a review of any citations made before they are issued. Anytime feasibility or reasonable determination issues come up they cannot move forward until policy staff in WISHA has reviewed them.

Jim Merchant asked Michael to review the audit process and how it will apply to the ergo rule.

Michael said that one of the functions of the audit is to do a quality check of the entire file, ensuring that there is sufficient documentation, correct code usage, right paths of questioning. Every inspector's work will be sampled. Patterns related to supervisors will also be tracked closely.

Is the review looking for correctness or consistency? Consistency with agency policy and practice among inspectors and also accuracy. The review takes place before the closing conference. If new information is given during the closing conference, further review and discussion would occur before a citation is issued.

Bill Andersen asked what remedy is available when a mistake is found. Michael Wood said that it would be corrected before the closing conference. Inspectors have no real right of appeal against policy. In that case, a mistake could provide relief to an employer if found through review. If we find a point of confusion, it can provide more directions to the inspector.

If there is a disagreement about the merits of the inspection, what is the process? The employer can appeal it.

Jim Merchant suggested that since this process is a little different for this rule, it should probably be explained in the WRD. Michael Wood said that he could provide more detail about the process in the WRD. It might be worth incorporating into the closing conference section that the citation has also been reviewed by management. This way employers wouldn't feel that the inspector was operating without supervision.

Jim asked Amber if she had any comments. Are there any ways the department could make the audit process or the issue of consistency any more clear than was just described?

Amber responded by saying that she has seen the reaction of the business community. It can take up to six months from opening to closing conferences. Upon receiving a citation, the employer has 15 calendar days to file an appeal. The informal review process can run up to 45 days after the receipt of appeal. She said she was concerned about the 15-day reply. She felt that if you added that the department had reviewed the citation it would cause a "chilling effect" in the employer community.

Bill asked where the appeal goes after it gets received. Michael Wood said if the department assumes jurisdiction, a hearings officer evaluates the additional information received in the appeal. When it comes to questions of policy guidance, appeal staff cannot disregard the department interpretation.

The next level after the hearings officer is the Board of Industrial Insurance Appeals.

Amber reemphasized that it is a long and costly process for an appeal. It takes time, money, and resources and, regardless of the internal process, it is going to leave employers feeling that they have no options.

Jim asked Michael to comment on the area of economic feasibility. What sort of guidance is in the WRD regarding it? Michael said that the draft WRD lays out a two-step process that draws on existing case law looking at whether it would have a significant impact on the employer. The inspectors look at what other similar employers have been able to implement and obvious controls that this employer can implement.

Economic feasibility is a flexible standard and may mean one thing to one and something else to another. Michael Wood said implementing controls cannot jeopardize the existence of the business.

To executive session.

#### ❖ Demonstration Project Subcommittee

Rick Goggins developed a draft matrix as requested. He also handed out other material regarding the thought process of how projects were selected.

The subcommittee decided to delegate the trial inspections work to a different subcommittee (enforcement).

David Wegman summarized the point that not all demonstration projects are intended to be generalized. For example, trial inspections are more of an example for the agency. They are an evaluation of L&I, not of employers...in essence, of a model program.

The subcommittee divided up work assignments for the next meeting:

Gwen Malone: background, summarize key issues of demonstration projects, how success was assessed

David Wegman: conclusions, recommendations

Claude Golden: summarize and categorize all input from surveys, public forum, and letters. (annotated list). Will encapsulate similar comments in categories. Wants to let people know that they were heard.

There was some discussion about input/comments, that it is important to distinguish what was useful as fact and what were opinions. We will have heard them, but they are not useful to our task. We will need to identify WISHA's view of the fact about comments that were made that weren't true.

The group tossed around the idea of Netconferencing. It is a possibility that they will look into.

A time schedule was discussed:

- Claude: initial draft of his piece by 12/7/01
- Gwen & David: will work jointly on Gwen's piece to have something by 11/15/01
- Conference call during the week of 12/11
- Claude & Gwen: will start working on second draft and David can start the first draft of the conclusions/recommendations piece
- Second conference call 1/08/02

Rick Goggins stated that L&I will have significant products from most demonstration projects by the end of December—at least draft products. L&I won't necessarily have buy off from all participants by then.

David Wegman brought up a complaint that he read/heard from Doug Henken with WFI. It indicated that the WFI was waiting for approval from the department and was unhappy. The context of this complaint needs to be more closely looked at.

David Wegman asked Rick Goggins for long-term plans for the demonstration projects beyond January 2002. Is there a plan for existing/future demonstration projects? Plans for distributing products? A means of getting information out to unions? David also stated that there needs to be a way to evaluate the effectiveness of the demonstration projects somewhere in the report.

Someone asked if there is any way to get generalizable information from consultations. Rick Goggins responded that L&I can ask employers for permission after the consultation is done. There is a form and a process that can be used. David Wegman asked for a copy of the form.

A question was asked: If L&I has a plentiful number of volunteers for demonstration projects, how would L&I decide which ones to pick? Some answers were offered: level of hazard, broadness of applicability.

Questions will come up that haven't yet been formulated as subcommittee members are writing out the draft report.

L&I was asked to provide the subcommittee revisions of the two-page summaries by the end of November.

Rick Goggins reviewed Action items:

- Follow up to the surveys—deadline: end of November
- Matrix and reasons for demonstration project selection final version
- Copies of AWB surveys that were turned in yesterday to be distributed to other panel members

- Revise two-page summaries—includes L&I self evaluation of success and revisions based on comments
- Safe harbor clarification—Michael Silverstein to address later today
- Long-term plan for demonstration projects beyond January 2002
- Plan for distribution of products
- Form for submitting control ideas from consultations outside of demonstration projects

#### ❖ Education Subcommittee

Before the teleconference begins, Larry Bindner asked Michael Silverstein if WISHA would fund a face-to-face meeting among Larry Bindner, Sue Schurman, and James McCauley in Washington D.C. as committee members have not yet had an opportunity to meet face-to-face.

#### Teleconference begins

Barbara Silverstein summarized the “Evaluation of Ergonomics Training Workshops, Washington State, 2001. Technical Report Number: 68-1-2001”. Her conclusion was that workshop participants are more equipped to handle ergonomic solutions and more able to comply with the rule. Also, the ergonomic knowledge base of participants improved.

Sue asked if the results showed significant learning improvements for participants with some and with no previous ergonomics training. Barbara said yes. Sue said “a stunning set of results”, and continued: she thought it was impressive that participants were able to ID lifting hazard engineering solutions after the workshop. The measure of educational effectiveness was Sue’s major concern and that has now been addressed. Her other concerns were minor process issues, such as where did data come from.

Question: Does training do what it is intended to do? Sue replied that, in general, she remains impressed with the quality of training including the design and look of the training. She was also skeptical that the department could deliver training according to its aggressive timetable, but is delighted that rule implementation timetables are being met.

The subcommittee said it would terminate data collection by January 15, 2002, but would want any additional information provided prior to that date if possible.

Larry reviewed panel decisions to meet on February 11 & 12 and that subcommittee reports should be prepared in draft form prior to February 11.

Randy Loomans comments: Many participants in a Pittsburgh Conference (not named) have told Randy that they are impressed with the amount and quality of ergo information on the WISHA website. Labor hasn’t been at all meetings because they perceive the BRP to be professional and objective. Labor wholeheartedly supports the ergo rule.



Barbara asked Amy Brackenberry about the training module the food industry had been developing. Amy replied that employers can review results of the employee study on complying with the ergo rule and ways to reduce exposures to hazards as well as reducing injuries.

Amy summarized the efforts of the food industry to work with the department to finalize and approve the food industry training module. She also mentioned the difference of opinion among the agency ergonomists and agency policy staff.

Larry asked if the intended audience was food industry employees and supervisors. Amy said the training is for employees, but that managers are also provided trainer training in how to deliver the training to employees.

Randy discussed the high hopes the UFCW had for partnering with the food industry to produce this training. She talked about the apparent discrepancy between the food industry's desire for the training program, but opposition to the rule. She observed that the food industry would not have addressed ergonomics if the rule had not been adopted. According to Randy, the food industry's major concern is not having sufficient time to train employees before the rule takes effect in July of 2002. Randy said she wished the food industry had put as much energy into helping the rule become effective as it had in opposing the rule.

Sue said she appreciated the remarks by both Randy and Amy. She also said she was very impressed with the evaluation results of the workshops.

Larry said that with the department's employee awareness education module available, the food industry would appear to have enough time to educate their employees about ergonomics and be in compliance with rule requirements.

Amy replied that the industry will train on ergonomic awareness and caution zone job assessment during the first year, and focus on correcting hazards training in the second year. Also, Amy believes that many employers remain ignorant of the rule and the requirements of the rule. The food industry is concerned with the high cost of replacing checkstands with adjustable height workstations.

Barbara discussed the survey results which showed that 45% of the employers in the first wave knew about the rule.

Michael Wood commented that the regions have plans to contact first wave employers and that about 148 such employers (out of 606-650) have already been contacted.

Larry said that industry-specific workshops are important and some industries are working with the department to develop these, and others are developing training on their own.

Amy said the food industry is concerned that they may have to do generic training first and then repeat training with more details about how to reduce injuries and address ergonomics hazards. The industry would like to train once, if possible, followed by yearly updates. She said she doesn't think that a lot of industries have done awareness training.

Amy also said that the food industry module could be completed in about 30 minutes, including the interactive components including testing.

Michael Wood and Amy discussed the frustration that greater cooperation in industry had not been achieved before now, but that they believed it will soon be achieved.

Larry asked about content of CD version of employee awareness training. It was stated that the CD program included an instructor's guide and places in which particular industries could plug in images of their particular industry.

Paul Snow agreed to get copies of the CD program to the Education Subcommittee within two weeks.

Larry agreed that both the department's training emphasis on rule compliance and the food industries concern that training address reduction of injuries are important.

Michael Wood discussed the portability issue of such training and that general rule compliance training is an important foundation to this awareness training. A food industry worker may change jobs and need to know about hazards and controls in other industries.

Larry asked for comments from the public. Larry concluded the meeting by saying that anything that would be helpful to the committee should be forwarded, and prior to January 15, 2002, if possible.

### Panel reconvenes

Michael Silverstein will provide some clarity to some terms and where they are most precisely defined. The term "safeharbor" means reducing a job below hazardous levels or reducing hazards to a level that is technologically and/or economically feasible. Bill Andersen questioned how safe is a safe harbor. Michael said that if an employer engages in behavior that meets the definition of a safeharbor they will be in compliance for that activity.

Bill Andersen reported that they had an interesting discussion regarding the internal appeal process. Jim reported that they had discussion regarding economic feasibility

David Wegman said the Demonstration Project Subcommittee was going to refer the inspection trials portion of the demonstration projects to the Policies and Procedures Subcommittee.

Demonstration Project Subcommittee plans to have a draft out by mid-January. Gwen will summarize key issues in success; Claude will summarize input from surveys and input from others, and David will work to incorporate conclusions and recommendations.

Larry reported that the Education Subcommittee session today consisted of Sue Schurman by speakerphone and himself. Barbara Silverstein gave a report on the survey of the four-hour training. Larry and Sue were very impressed with the success of those workshops and saw a dramatic increase in the education level they seemed to show. The subcommittee plans to get together before the next meeting of the panel. So far they think that the department has done a good job of outreach.

#### ❖ PUBLIC COMMENT

-- Randy Loomans, Education and Safety Director of the Washington State Labor Council.

Randy said that labor feels that this rule is one of the most significant safety rules WISHA has adopted since its inception. Labor has felt for a long time that L&I was negligent in not adopting it earlier as the rate of MSD injuries is out of control. The Legislature finally instructed the department to do something about it, and L&I did its job in promulgating this rule.

Randy said the gutting of the Safety and Health Impact Grant Program when it was attached to a delay of the ergonomics rule shows the all out effort of the business community to take the regulation down. It has been a real battle. Randy said she feels like the panel is in a no win situation, but she appreciates they work have done.

Dr. Wegman asks Randy if she thinks there might be an opportunity to get the grant program back. Randy was skeptical, as it will probably be in the same situation.

-- Dan Fazio, Washington Farm Bureau

The Farm Bureau participated in one of the demonstration projects. He can answer any questions they may have about that. Dan expressed that he also feels that the panel is in a difficult position.

The Farm Bureau is interested in agriculture. There are 10, 000 farms and 180,000 workers in Washington State. Farms don't have any desire to comply with the rule.

With the environmental and labor laws to comply with in Washington State, the agriculture business can't compete. The demonstration project report is an excellent report and gives lots of good ideas but it can't tell exactly what it is that a farmer needs to do in order to comply with the rule. There were some good common sense areas. The Farm Bureau had to conclude that the demonstration project did not meet the needs of their employers because their employers told them that they did not want to get further

involved. At the end of the demonstration project, the safety manager said he did not feel he was any more able to comply with the regulation than before the project began.

People in agriculture are focused on the day-to-day issues. When the regulation is in effect they will work closely with the department but are not inclined to do so since they have a five-year period from when the rule is adopted to when it takes effect.

Jim Merchant noted most members are going to have to comply with the rule. What could the department do to help the agriculture community comply with the rule? Dan said that the problem is that the people in agriculture businesses don't want to work with L&I. They want the Farm Bureau to tell them what they need to do to comply. Farmers want to be innovators, they want to be the people that make the changes. They are resistant when someone else tells them they need to do something, especially if it makes their work more difficult.

Farmers want a regulation that tells exactly what to do and is easy to understand from a conceptual basis. Dan says that those people who wanted to comply with the regulation probably would have done so without the regulation. The experience isn't there for this industry and they can't see the cost benefit of implementing this rule.

-- Amy Brackenberry, Washington Food Industry

Amy said the department has done a lot of outreach and has taken great pains to allow for input. No other industry has been as involved as the food industry. Last year, the WFI received a grant that looked at the implementation of the ergonomics rule and how to conduct assessments. The WFI has done a very comprehensive job in our industry. There was a lot of support going through this process because we knew we had an ergonomics rule to comply with.

The industry developed a list of best practices which was published and made available in July. When we started looking at the recommendations from WFI's grant-hired ergonomist, the safety and health professionals and the policy staff at the department were saying different things. What is industry supposed to do when a department ergonomist says certain things are to be done to reduce injuries, and then policy staff says they don't.

Jim Merchant stated that there is always a difference between the minimum requirements and best practices. It should be pretty easy to figure that out.

Amy said that a manual would be helpful; all the food industry has is a lot of verbal communications. They want a list of best practices: "What do we have to do?"

Jim asked Michael Silverstein if the department could help this industry tell the difference. Michael was confident that they could work through their concerns.

-- Amber Balch of Association of Washington Business

Amber wanted to clarify some remarks regarding AWB's political activities. AWB lobbied for a delay of the ergonomics rule; however, it was the Legislature who chose to attach the grant program with ergonomics and AWB supported it. AWB is currently working with the department in support of a collaborative safety and health grants program.

The WE CARE coalition is a part of AWB. WE CARE asserts that the department exceeded their statutory authority.

They don't see a regulation as the tool for accomplishing the goal of reducing WMSD injuries. The injury-specific information isn't out there and the department is not ready. Amber said education can be a wonderful tool, but the regulation is creating mistrust in the employer community and won't get us to where we need to be.

Is the rule understandable? If read on the literal sense; yes, it's understandable. However, until you get into the detail of what these terms mean do you realize this rule is not understandable at all. The same goes for the WRD. Is the rule understandable: No.

As for the policies and procedures being fair, there have been a lot of drafts so far and it can still change at the drop of a hat. It is unfair to suggest that a policy statement that has major substantive provisions is fair.

The AWB has a number of employers in their membership concerned about this process and looked at filing the lawsuit as a last resort. Amber asserts that the AWB has attempted to provide reasonable recourse with the Legislature. The panel is being asked to determine whether the rule is ready to move forward. AWB is ready to put forth information to prove that it is not.

-- Michael Silverstein

Michael said he wanted to address some concerns put forth by the food industry as there are issues of fact that are worth clarifying. The department invited the food industry to participate in a demonstration project months ago to come up with some best practices. The food industry declined, saying they preferred not to participate in a demonstration project. Instead, they chose to pursue the ergonomics issue through a grant and hired a private consultant. The grant project was interesting. It visited 120 stores and determined that about 20 minutes was sufficient for an evaluation and found that few jobs are in the caution zone with fewer in the hazard zone.

The consultant issued a set of recommendations that went way beyond the requirements of the rule. Some of these recommendations included beveled floor mats, exercise programs for employees, and ergonomic chairs for breakrooms. These are not required by the rule. The department is still hoping to work closely with the food industry on a demonstration project.

The next meeting will take place February 11-12. The agenda will be posted on the website.

With no more business the meeting was adjourned.